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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 04/30/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/594,922

Applicant(s)

ROUSSEL ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 1-22-03, 3-20-03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-22, 224-35 is/are pending in the application.

Of the above claim(s) 29-34 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-22, 24-28 & 35 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 20, 2003 has been entered.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 3, 8, 25, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite since it is not clear to what "a diameter...mm" (lines 3-4) refers. Is this ^{the} the diameter of each fiber or the diameter of the bundle? Claim 2 is also indefinite in reciting that the fibrous material "consists of" 0.1 to 1 mm small fibers (line 6) while also reciting that the fibrous material includes individual fibers or bundles of fibers having a diameter of 1um to 1 mm. Claim 3 is indefinite since it is not clear to what "in... shapes" (lines 2-3) refers. There is no antecedent basis in claim 8 for "the transferred material" (claim 8, lines 12, 13 and 15), which can be corrected by changing "material" to "fish meat"; in claim 7 for "melting...material" (claim 25, lines 1-2); and in claim 7 for "the paste obtained by mixing" (claim 26, lines 1-2). Claim 27 is indefinite

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since it is not clear what is intended by the color^{us}...cooking step." Corrections are required without new matter.

4. Claims 1, 2, 7, 8, 10, 13, 18-21, 25, 26 and 35 are objected to because of the following informalities: In claims 1 and 2, lines 1-2, "two materials", is superfluous and should be cancelled. In claim 1, line 7 "in an" should be changed to "on the". In claim 7, line 4, "an" should be changed to "the". In claim 8, step c, a comma should be added after "extruding", after "barrel" and after "plasticization" and "and". should be added before "shaping". In claim 10, line 3, a comma should be added after "length." In claim 13, line 1, "wherein," should be changed to ", wherein". In claim 18, the comma should be cancelled. In claim 19, "has" should be added after "and" (line 4), and "wherein" should be added after "and" (line 5). In claim 20, line 1, "a" should be changed to "the" and line 3, "in" should be changed to "by". In claim 21, "a" (second occurrence in line 2) should be changed to "the". In claim 25: line 1, "a" should be cancelled; line 2, "a" (second occurrence) should be changed to "the"; and line 3, "the" (second occurrence) should be changed to "a". In claim 35, line 9, "c" should be cancelled; line 10, the semicolon should be cancelled; and line 11, "the ... ^{us}having" should be cancelled. In claim 26, line 7, "and" should be added after the semicolon. Appropriate correction is required.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-22, 24-28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yueh .

Applicant is referred to paragraph No. 5, Paper No. 9.

7. Applicant's arguments filed January 22, 2003 have been fully considered but they are not persuasive. Applicant's discussion of functional features on page 7 of the remarks has been considered. However, applicant's claimed functional features do not patentably distinguish applicant's product and process over that disclosed in Yueh, which product is aerated by mixing, extruded, and cooked by heating in an oven or steam chamber and is composed of both fish paste and fish fibers.

8. Claims 29-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8. Also, see the last sentence in paragraph No. 1, Paper No. 9.


9. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
April 28, 2003



ARTHUR L. CORBIN
PRIMARY EXAMINER

4-29-03